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12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 OAKLAND DIVISION

15 **IN RE: PETITION OF JENNIFER GRANICK AND RIANA PFEFFERKORN TO UNSEAL TECHNICAL-ASSISTANCE ORDERS AND MATERIALS**) NO. CV 16-80206 MISC. KAW
16)
17) UNITED STATES' STATEMENT OF INTEREST
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20)
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25)

26 The United States is not a party to the instant action. Nevertheless, the United States may be a
27 real party in interest in this matter as the Petition appears to relate to materials filed by the United States
28 under seal with the Court in the course of carrying out its responsibility to enforce federal criminal law.
Therefore, the United States requests that it be provided an opportunity to be heard before the Court
grants any of the relief the Petitioners are seeking.¹ *See* 28 U.S.C. § 517 (authorizing attorneys from the
Department of Justice “to attend to the interests of the United States in a suit pending in a court of the
United States, or in a court of a State, or to attend to any other interest of the United States”); *Roeder v.*

27 ¹ Because the Petition seeks to alter the court’s administrative procedures and commandeer court
28 resources, the Court may determine that it is appropriate to deny the Petition for reasons that do not
implicate the United States’ interests discussed below.

1 *Islamic Republic of Iran*, 195 F. Supp. 2d 140, 158 (D.D.C. 2002) (“The United States clearly has the
2 authority pursuant to 28 U.S.C. § 517 to move to intervene in a case should it believe that its interests
3 are sufficiently implicated, and has done so on countless occasions.”) (citing cases); *see also Huff v.*
4 *United States*, 10 F.3d 1440, 1444 (9th Cir. 2007) (recognizing authority granted by 28 U.S.C. § 517 for
5 attorneys of the Department of Justice to appear in court to represent the interests of the United States).

6 Petitioners appear to be requesting that the Court issue a blanket order: (1) altering the court’s
7 assignment of case numbers to and docketing of certain materials filed with the court during the past 10
8 years; (2) changing the Court’s docketing practices for certain categories of materials going forward; (3)
9 assigning court resources to conduct a “periodic review” of court files to determine whether the Court
10 should *sua sponte* unseal court records, some of which are required to be sealed as a matter of law; and
11 (4) unsealing and making publicly available court records relating to the court’s authorization of
12 investigative techniques in criminal investigations under the following statutes:

- 13 (a) 18 U.S.C. §§ 2511(2)(a)(ii) and/or 2518(4) (Wire and Electronic Communications
14 Interception and Interception of Oral Communications);
- 15 (b) 18 U.S.C. § 2703 (Stored Wire and Electronic Communications and Transactional
16 Records Access);
- 17 (c) 18 U.S.C. §§ 3123(b)(2) and/or 3124(a) or (b) (Pen Registers and Trap and Trace Devices);
18 and
- 19 (d) 28 U.S.C. § 1651 (All Writs Act).

20 With the exception of the All Writs Act,² each of the statutory schemes at issue in Petitioner’s
21 request specifically protects the confidentiality of the communications and other information at issue.
22 *See* 18 U.S.C. § 2511 (1)(c) (prohibiting disclosure of intercepted communications); 18 U.S.C.
23 § 2511(2)(a)(i) (prohibiting communication service providers from disclosing existence of wiretap); 18
24 U.S.C. § 2518(8)(a) & (b) (requiring wiretap applications and orders and the contents of any intercepted

26 _____
27 ² As its name implies, the All Writs Act is a broad statute providing that “[t]he Supreme Court
28 and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their
respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. 1651(a). While
the All Writs Act is sometimes used to aid in criminal investigations, the Act is invoked a wide variety
of circumstances necessary to give force and effect to the court’s orders and procedures.

1 communications be sealed by the court); 18 U.S.C. § 2702(a) (prohibiting disclosure of contents of
2 communications and subscriber records); 18 U.S.C. § 3123(d) (requiring that pen register or trap and
3 trace order be sealed by the court and its existence not be disclosed by the service provider). The United
4 States has an overarching interest in enforcing federal law, including these confidentiality provisions,
5 that is implicated by the relief requested in the Petition.

6 The Petitioners' request also implicates other rights, privileges, and protections that have long
7 been recognized by the courts as vital to the proper functioning of the criminal justice system, and, thus,
8 the United States has an interest in protecting them. These interests include protecting the privacy and
9 reputations of persons who are investigated but not ultimately charged with crimes, as well as those who
10 may associate with persons involved in crime but who are not themselves involved in illegal activity.

11 *See Gelbard v. United States*, 408 U.S. 41, 49 (1972) (recognizing that "the protection of privacy was an
12 overriding congressional concern" when Congress enacted the wiretap statute). In addition, because the
13 investigative techniques identified in the Petition are frequently used in the course of a grand jury
14 investigation, the United States' interest in protecting the confidentiality of the grand jury's proceedings
15 is also implicated. *See Douglas Oil Co. of California v. Petrol Stops Northwest*, 441 U.S. 211, 218

16 (1979) (proper functioning of grand jury rests on secrecy of its proceedings, which serves important
17 purposes such as protecting witnesses who may fear retaliation if their testimony were known and
18 shielding grand jurors from pressure or inducements by those under investigation); *United States v.*

19 *Proctor & Gamble Co.*, 356 U.S. 677, 681-82 n.6 (1958) (recognizing one of the most important aspects
20 of the grand jury secrecy provisions is the protection afforded for those who are investigated but not
21 ultimately prosecuted). The United States also has an interest in maintaining the confidentiality of its
22 investigations, including protecting confidential sources and undercover agents who may have risked
23 their lives to assist in the enforcement of federal criminal laws. *See Roviaro v. United Stated States*, 353

24 U.S. 53, 59 (1957) (recognizing right to keep identities of confidential informants secret to encourage
25 reporting to law enforcement and protect safety of individuals who do so). Moreover, because the
26 United States is the primary user of the techniques at issue in the Petition, the United States has a
27 substantial interest in the development of the law in this area.

Accordingly, the United States respectfully requests that the Court permit the United States to provide its counsel regarding the Petition before any of the requested relief is granted.

DATED: October 13, 2016

Respectfully submitted,

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/s/

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